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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 98-56

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom) are an original and nine copies of its comments in response to the Notice of Proposed Rulemaking (NPRM) in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Julie A. Barrie

Julie A. Barrie

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Summary

The Commission has wisely recognized that it must give special attention to the implications of its proposals for extensive OSS performance measurements and reports on small, midsized and rural telephone companies, and should exclude them from any such compliance tools it designs here. The NPRM's proposed guidelines for states would require the TDS Telecom rural ILECs either to upgrade to provide automated OSS information systems or sink enormous additional time and expense into their manual processing operations. In either case, the heavy new burdens would be most unlikely to benefit most rural customers because competition will come last to their areas. Yet, given the NPRM's failure to provide for cost recovery from those that benefit from the enforcement rules, rural customers would nevertheless likely pay for the major upgrade costs. And the Commission clearly intends state adoption of the requirements it designs, not just to give free advice to the states, although serious jurisdictional and substantive questions about §251(c)remain before courts and the Commission itself.

Congress exempted most rural ILECs from the expansive §251(c) competitor interface requirements the NPRM seeks to help those carriers enforce to spare them from infeasible technical

and excessive economic burdens and impairment of their ability to provide universal service. It also left sensible flexibility for ILECs and interconnecting carriers to negotiate and the state to supervise arrangements that could accommodate diverse circumstances. The NPRM's measurements, however, inconsistently assume that states should make all ILECs measure and report on compliance with detailed "one size fits all" OSS responsibilities, even those in unique situations such as the TDS ILECs. Thus, there is every reason for the Commission to avoid hastily piling these expensive and burdensome regulatory demands on rural ILECs and their customers, rather than embroiling them in interexchange entry and urban market battles that do not involve rural ILECs.

There is no question that the costs for rural ILECs would be prohibitive since most, like the TDS ILECs, use largely manual, not automated, OSS processing systems. By imposing the costs of either massive conversions to electronic processing and information gathering or the expense of time-consuming manual processing and measurement operations and associated new staffing burdens and exposing normally confidential operating information to competitors, the compliance machinery would penalize rural ILECs for assumed violations of OSS requirements, without even asking whether abuses exist. The added burdens would distract TDS ILECs' attention and resources from improving end user service and meeting the endless parade of other new federal requirements, such as number portability, CALEA, CPNI access tracking and others.

The vast majority of the new obligations addressed in the NPRM and its appendices presume, based on a few urban ILECs' systems, electronic capabilities that TDS Telecom ILECs simply do not possess. Even report frequency and statistical analyses of ILEC performance data designed for urban ILECs would not suit the different and diverse rural conditions. Indeed, the information and processing obligations would force rural ILECs to provide functions of "superior quality" to what their business situation has justified their providing for themselves – a result the Eighth Circuit has held unlawful. The proposals would even make TDS ILECs responsible for the quality of 911 and operator/directory assistance functions TDS obtains in the marketplace under contracts with third party providers.

The Commission should not at this time adopt any OSS compliance measurement and reporting requirements for rural ILECs. Relying on state exemption termination proceedings and complaint processes will allow far better results for the fundamental differences in the legal, economic and technical implications for rural and urban service providers – and for the interests of rural customers.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and	)	
Reporting Requirements	)	CC Docket No. 98-56
for Operations Support Systems,	)	
Interconnection and Operator	)	
Services and Directory Assistance	)	

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telcommunications Corporation (TDS Telecom or TDS), on behalf of its 106 local exchange carriers (LECs) operating in 28 states and by its attorneys, files these comments to respond to the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.[1] The NPRM proposes "guidelines," to be urged on the states, that would require all incumbent local exchange carriers (ILECs) to provide performance measurements and reports. The resulting state rules would force ILECs to prove their compliance with §251(c) of the Telecommunications Act of 1996 (1996 Act), help their competitors to demand enforcement of the Commission's mandate for providing ILECs' internal Operations Support Systems

[1] Notice of Proposed Rulemaking, CC Docket No. 98-56, FCC 98-72 (rel. April 17, 1998).

(OSS) and, the Commission hopes, stimulate speedier profitable competitive entry in ILEC markets with limited investment in facilities. The extensive performance measurements and reporting requirements would, at worst, overwhelm small, midsized and rural ILECs[2] and their customers with massive system upgrades, at enormous costs or, at best, escalate time and expense burdens for sharply expanded manual processing operations. In either case, there would be little prospect of benefits for the ILECs rural customers. TDS Telecom urges the Commission not to exhort the states to pursue the over-regulatory and unjustified course the NPRM proposes, at least for the nation's extremely diverse rural ILECs and the rural residences, businesses and institutions. Many or most of these rural customers need to rely on their ILEC effective universal service providers, at least for now, and probably longer, for access to the increasingly essential basic 20th-21st Century national resource: advanced, affordable and evolving telecommunications and information services.

<u>The NPRM Correctly Recognizes the Need for Special Vigilance to Prevent Excessive Costs and Burdens for Rural ILECs</u>

TDS Telecom is pleased that the NPRM expressly recognizes

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[2] TDS Telecom will refer to the set of "small, rural or midsized LECs" (¶131) for which the proposed burdens would be most severe as the "rural ILECs".

(¶¶21, 131) the danger that its proposals "will impose particular costs or burdens on small, rural, or midsized incumbent LECs." In view of rural service market facts of which Congress and the Commission have become well aware, the Commission is right to solicit input (¶131) on threatened adverse effects of requiring these ILECs to modify their existing computer systems and redirect their limited resources, thereby imposing the costs both of support systems investment and operational expenses and of a bureaucratic deluge of proposed measurements, statistical analyses and reports. Indeed, the NPRM repeatedly claims(¶¶3,17,31,36,42,105) that one goal is to minimize burdens on ILECs. This awareness that the demands of competitors to use ILECs' internal systems for their operations and to force the ILECs to prove that their competitors' operational support equals or exceeds the ILEC's own will impose costs has led the Commission prudently to refrain (¶125) from prematurely proposing formal performance standards before more facts are known.

TDS suggests that the Commission would serve rural customers far better by waiting to impose burdens and costs of §251(c) compliance documentation until it sees how its guidelines are received by the states and how they work in urban ILEC areas. In fact, the Commission has not yet finished its reconsideration of the rules imposing OSS and the other elaborations of the §251(c) requirements. Some central §251 implementation issues are still being considered by the U.S. Supreme Court, and OSS arrangements, like other §251 and §252 competitor-interconnection terms, are subject to considerable negotiating flexibility under the statutory framework of §251(c)(1). Congress clearly understood that the negotiation and arbitration processes allows interexchange carriers, competing local providers and state commissions to craft access agreements that accommodate unique situations. TDS Telecom believes that such a flexible process is far more appropriate at this time for rural carriers than "one size fits all" standards. It would conserve Commission resources not to place hasty demands and detailed measurement and documentation duties on even the largest ILECs at this point. Moreover, the NPRM observes (¶25) that jurisdictional disputes have already surfaced in regard to state and federal roles on the issues in this proceeding. It would be prudent not to overreach at this point in urging heavy-handed government intevention by federal or state authorities into the operational support arrangements between rural ILECs and their competitors.

<u>The Commission Should Ensure that Rural Customers Do Not Pay for Jump-Starting Competition Elsewhere or Before It Is Likely to</u>

Benefit Their Areas

Despite the NPRM's stated concern for ILEC burdens, it is clear from the intensely regulatory and burdensome requirements proposed for all ILECs that the NPRM's paramount goal is to help competitors and potential future competitors to expose and root out assumed widespread ILEC wrongdoing and drastically modify even rural ILECs OSS provision, all in order to jump start non-facilities based competition. The Commission's focus on hastening competition is grounded in one of the 1996 Act's fundamental purposes, to be sure. However, a striking omission from the NPRM that concerns TDS Telecom is an analysis of what bill rural customers will end up footing for premature network alterations and other expenses proposed here for rural ILECs, let alone a systematic strategy for ensuring that the considerable costs can be recouped from those that benefit.[3]

There is little room to dispute that competition will start first in large urban markets that can support more than one profitable carrier and, except for cherry picking the few best

[3] The NPRM briefly asks (¶113) who should pay in discussing audits of ILEC operations by regulators or competitors. But the underlying assumption seems to be that these costs are simply to fall on the ILECs and, since no universal server network-wide cost recovery has ever been proposed, upon their customers that do not or cannot choose competitors' services.

customers in rural markets, competitors will be slower to appear in areas served by rural ILECs. Rural ILEC service areas typically did not even attract the larger carriers in the first place because their higher costs and lower potential traffic volumes could not even support a first carrier without network-based sharing of the above average costs. Since rural area customers will be last to see the benefits of genuine competition, the Commission should be exceptionally careful not to make them pay for new support systems, oppressive regulatory record keeping and compliance enforcement assistance for competitive expansion that will not benefit them in the foreseeable future.

<u>It Is Too Soon to Impose Costly Compliance Measurements and Heavy Documentation Duties on Rural ILECs and Their Customers</u>

Congress was well aware that the competitive and public interest equation can be quite different in rural ILEC markets. Indeed, most rural ILECs remain exempt from the requirements in §251(c) by virtue of §251(f), so that there is no reason to put their rural customers to the expense of measurements and reports until whenever the exemptions are lifted by the states as conditions in those rural markets change. The §251(f)exemption demonstrates that Congress did not attach the same urgency or priority to transforming rural ILECs automatically into wholesale carriers for their competitors to the detriment of their ability to provide and improve service to their rural customers. The wholesale requirement and the associated burdens were only to be imposed when a state was satisfied that the requirements would not be "unduly economically burdensome," technically infeasible or inconsistent with the universal service requirements of §254.

Therefore, plainly, two of the unavoidable questions that the Commission should answer for rural carriers here, before submerging them under onerous enforcement machinery for the §251(c) incumbent ILEC requirements, are whether the §251(c) requirements even apply yet and, if they do, whether the measurements and reports are technically feasible for such carriers or will undermine the state's finding that termination of the rural exemption meets the statutory standard.

Proper attention to the unique issues Congress recognized for rural ILEC areas will be difficult to achieve in this proceeding and at this time. The current OSS battles are heated because opponents of BOC in-region interexchange entry seek to block entry by attacks on BOCs' progress in opening their networks to competition and competitors targeting the urban markets will focus on how far they can push OSS access and information to enforce it, given the information systems, resources and market characteristics of the largest ILECs. All of those considerations are foreign to rural ILEC OSS issues. Beyond that, the BOCs may have something to gain from measurements and reports that may help satisfy the demands of their interexchange and local exchange rivals. But rural ILECs and their customers face only increased burdens from these proposed OSS costs and upgrade requirements.[4] The statute does not direct the Commission to impose reporting requirements or measurement obligations, let alone indicate that the Commission

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[4] For large ILECs and rural ILECs alike,TDS Telecom is also concerned that the NPRM is not adhering strictly to the statutory standards in elaborating ILEC duties to competitors. The NPRM correctly states (¶¶10, 11, 116) the statutory standards for OSS arrangements: a just and reasonable basis and no discrimination in the way the ILEC treats itself, others and any particular competitor. However, in other places (e.g.,¶8) it applies a spurious standard: whether the ILECs' provision of OSS "provide[s] an efficient competitor with a meaningful opportunity to compete." The requirement for "just and reasonable" terms cannot be interpreted to force rural ILECs to provide more in the way of OSS for competitors than it does for itself or others, just because the Commission and competitors or opponents of BOC in region interexchange entry think more support and information would help local competitors. The Commission should not mistake boosting competitors for fostering competition. Therefore, it should carefully assess the reasons competitors are pressing for heavy requirements like the electronic interfaces, measurements, reporting and evaluation standards it apparently thinks even rural ILECs should provide and meet.

is right (¶14) that ILECs will have to modify their "internal operations support systems to accommodate the needs of the new wholesale 'customers,'" which the NPRM itself describes as "a substantial undertaking." The Commission should not stretch its reading of the 1996 Act to add heavy-handed compliance demonstration obligations to already expansive interpretations of §251(c) and then force the resulting burdens on the rural carriers, markets and customers that Congress determined should have a lighter regulatory hand with respect to competing carrier interconnection requirements.

<u>The Commission Should Exclude Rural Telephone Companies from Any OSS Guidelines It Adopts In This Proceeding</u>

The Commission's proposed measures do not even satisfy its own goal of balancing burdens on rural ILECs, while preventing carrier abuses for two basic reasons: first, the requirements would impose uniquely onerous burdens on rural ILECs such as the TDS Telecom companies because they do not have the automated systems the NPRM presumes for the industry. Second, there is a "guilty until proven innocent" assumption in the NPRM that requires rural ILECs to incur huge costs to prove they are not guilty of OSS-related abuses.

<u>Requiring Rural ILECs to Upgrade Their OSS and Data Handling Systems Would Misuse Their Resources</u>

Extensive requirements to measure and report OSS data, such as those proposed in the NPRM, will force TDS Telecom to divert resources either to create systems using electronic processing and reporting which it has not even planned for its own internal needs or to provide the trained personnel and time necessary to perform complicated data collection, report preparation and statistical analyses. The time, labor and money diverted to these uses will not be available for other plans and obligations of the TDS ILECs. The lost opportunities and diversions of necessary resources range from other upgrades that would provide direct benefits to their rural customers, such as new product development and increased customer satisfaction initiatives, to implementing the endless parade of other requirements imposed by federal fiat, such as number portability, CALEA compliance, CIC codes, dialing parity, tracking access to CPNI and others.

Benefits to rural ILECs' customers are likely to be limited to theoretical speculations about possible future market developments that someday will make competitive entry a reality in their areas. For now, with competition targeted at more profitable markets, however, the costs of upgrades by rural ILECs to generate masses of data to enforce requirements most are currently exempted from meeting at this point, would brand such government-imposed expenditures as wasteful, imprudent and unnecessary investment and expense.

<u>The NPRM Erroneously Assumes that All ILECs Are Guilty of §251 Abuses</u>

Because the NPRM presumes abuses and foot-dragging in compliance with legitimate requirements, and requires an ILEC (¶101) "to demonstrate that it is satisfying the statutory requirements of section 251(c)(2)," it prematurely places rural ILECs in the position of proving their intentions for the future are not unlawful. Indeed, the NPRM encourages states (¶125) to adopt performance standards that the TDS Telecom ILECs could not meet and asssumes (¶73) that ILECs that use manual systems do not provide adequate order completions. Making showings on such issues inevitably falls more heavily on rural ILECs and their customers because there is only a limited subscriber base to absorb the costs. And, for now, the beneficiaries of the investment – competitors in their markets – have generally not appeared in rural ILEC areas. Thus, there is no way for the ILEC to recoup these costs from the cost causers.

Nor can the Commission excuse the excessive costs and requirements its proposals would impose on rural ILECs like the TDS ILECs by its repeated assurances (<u>e.g.</u>,¶24) that the guidelines are not binding. The NPRM encourages, expects and hopes that the states will impose the requirements it suggests (¶23),[5] threatens national rules (¶24) if the states do not act to its satisfaction, and showers praise (¶26)on states that are imposing this sort of requirement -- or even stricter performance standards -- on ILECs. The Commission's intention is plainly to get its proposals turned into binding requirements by the states.

In short, the requirements and assumptions in the NPRM will put rural ILECs at an unfair and unjustifiable disadvantage, for no good reason, unless they are simply not extended to such carriers until a need has emerged. Instead of presuming guilt, the Commission should proceed on a complaint basis in rural ILEC markets until there is some credible evidence that abuses are a real occurrence. Until then, the elaborate measurement and reporting requirements are expensive, onerous remedies for a nonexistent problem. To impose a particularly heavy burden on rural ILECs when there is so little likelihood of benefit to

[5] Similarly, when the Commission left 75% of the necessary federal support for states to recover, the Commission simply expected the states to do so, and relied on their following its lead to hold that "the contributions collected by both jurisdictions will be sufficient to fund universal service." Order on Reconsideration, CC Docket No. 96-45, FCC 97-45 (rel. July 10, 1997).

rural customers is an affront to the deregulatory and universal service commitments of the Commission's threefold purpose in enacting the 1996 Act. It is especially puzzling that the Commission would go to these extremes to enforce its broad interpretation of the requirements of §251(c), in the face of Congress's careful exemption for rural ILECs, when the Commission refused outright to impose any measurement or reporting requirements – or even to require public availability of rate information – for the interexchange services which Congress expressly directed the Commission to require in §254(g).

Many of the Alternatives the Commission is Considering Would Further Aggravate the Unwarranted Burdens on Rural ILECs and their Customers Without Adding to the Quality of the Available Information

As explained above, TDS knows from experience that national standards are not necessarily inappropriate to apply to unique rural situations. In addressing specific proposed requirements and measures below, we hope to present concrete examples of why such measures may not work for rural LECs.

One example is the geographic area for any reporting requirements. For rural ILECs the area must be no more inclusive than the market level. A requirement for more expansive data would mask the differences that set each of the TDS Telecom service areas apart. Neither upgrade requirements nor mandatory information gathering for enforcement purposes can fail to recognize that each study area faces different conditions and constraints. That is the reason for the study area or operating company focus of the first three prongs of the rural telephone company definition in §251(f) and, even more importantly, for the application at the individual rural ILEC level of the tests under §251(f) for when to terminate the rural exemption from §251(c).

A directive to disaggregate breakdowns by electronic interface (¶41) would be meaningless for ILECs like the TDS Telecom ILECs that do not have electronic interfaces. To impose the costs and divert the resources necessary to develop such systems in order to report on OSS availability would be tantamount to making the enforcement-compliance tail wag the statutory-obligation dog. Similarly, the Commission should avoid pressuring small CLECs to provide electronic interfaces as the prescribed means of ILEC compliance, since the development costs could function as a barrier to market entry by small CLECs.

The Commission should adopt the simplest and least administratively burdensome method of report distribution to spare rural ILECs unnecessary trouble and expense. This would presumably often mean filing with state commissions. It would also point toward less frequent reporting for ILECs, certainly not the most burdensome alternative -- monthly reports -- that the NPRM is considering.[6] The scope, detail, location for filing and frequency of mandated reports should be scaled to the characteristics of the ILEC and its market.

The state commissions could make appropriate levels of information filed by rural ILECs publicly available. However, the Commission should rethink its flawed proposed balancing of the competitive and confidentiality costs and burdens of measurement and recording requirements. The NPRM stresses the need for information flows to competitors (¶¶106, 110, 111) but shows little awareness that forcing ILECs to make available competitively sensitive information about their order filling for retail customers is intrusive for them and hampers their ability to compete by providing superior service to their customers. Instead, every improvement would have to be made available to their competitors. At the very least, the Commission should

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[6] The electronic ability to generate such frequent reports does not extend to the TDS ILECS and other rural companies. The cost of developing systems capable of such reporting -- or the cost and time required to prepare monthly reports manually -- in rural markets would be out of all proportion to the relative need for and cost of providing information in urban markets (where ILECs likely already have the necessary electronic systems and where competition will first become established).

strictly limit the use of any ILEC information made available to competitors and the competitively sensitive information ILECs must furnish to the absolute minimum necessary. That information should not include the background data, and particularly not disaggregated background information. The reporting problem for ILECs without electronic systems would increase geometrically if they also had to compile non-averaged information manually. Since specific snapshots or cross-sections of rural ILEC performance are often not representative, averages are also a better indicator of an ILEC's overall performance. Audits by a third party would make the difficult determination of what background data should be made available unnecessary. However, competitors should not be given the right to audit ILECs. There is no basis in the record for an assumption that all ILECs should be subjected to such extreme invasions of the normal right of a private company to reasonable confidentiality and freedom from intervention by its competitors in the details of its business.

The adoption of any statistical analysis applicable to rural ILECs would not contribute reasonable accuracy or predictability for the ILEC. The comparatively small number of orders processed by a rural ILEC provides a smaller sample that reduces the reliability of statistical results. As a result, a safe harbor or trigger for further review keyed to statistical analysis would not provide the confidence that its results would demonstrate even the most meticulous compliance. It would be a grave disservice to rural providers to expose them to greater costs and burdens to show compliance and to defend against allegations of non-compliance fueled by inaccurate results simply because data from smaller samples is subject to distortion by anomalies.

<u>The Rural ILECs Do Not Even Provide Fully Automated OSS or Data Gathering Functions for Themselves</u>

The TDS ILECs and undoubtedly many or most other rural ILECs do not have in place the electronic OSS arrangements that the largest ILECs apparently use for their own internal support system functions. The Commission presupposes (¶¶10-11, 40, 41-42, 59) that there is far more widespread electronic OSS, measurement and reporting capability available to ILECs than is the case. This presumption is based (¶¶71, 92) on information about a few of the largest ILECs. However, the Commission itself notes (¶71, n.92) with regard to BellSouth that, while 97% of its residential orders are electronically processed, almost 20% of its business orders require some manual intervention.

The TDS Telecom ILECs, in sharp contrast, use manual support for most of their OSS functions. For example, beefing up their manual processing for pre-ordering, ordering/provisioning and repair and maintenance to enable them to provide the measurements (listed in §§ I-III of Appendix A) would require new dedicated staff positions to compile the required information from various sources within the company. The processing method would continue to be data entry in spreadsheets or files, followed by staff processing to generate any required reports, but more staff and much more data would need to be manipulated at greater expense. If OSS performance measurements required automation, TDS Telecom and other rural ILECs would have to overhaul these manual systems entirely. Very few elements of the requirements would require less alterations and could be feasibly accomplished. One example is trouble-based data requirements (Appendix A, § II.E), since some state regulators already collect this information. However, automation of most of the proposed measurements and reports would require significant and expensive systems development and upgrades. The automation would also waste resources by prematurely replacing systems which have been meeting the rural ILECs' needs cost-effectively. Given the limited number of requests for OSS access in these locations, it does not make economic sense to substitute large new systems to meet such limited demand.

Other specific requirements are also partly feasible and partly infeasible for rural ILECs that lack the level of automation found in the largest markets and the largest ILECs. Some TDS billing processes are manual, for example, and will require high-cost dedicated additions of qualified staff to process invoices. In contrast, usage records could be handled without extensive systems alterations, and trunk blockage measures called for in Appendix A, § VI would be feasible without major system alterations because base systems are already in place, but each TDS carrier with no current need for colocation processes would have to develop such processes in the event its state terminated its rural exemption. Thus, even within each individual carrier's operation, it cannot be assumed that the burden of compliance with the extensive proposed requirements would be uniform, much less reasonably easy to satisfy overall.

TDS Telecom does not currently track internal pre-ordering, ordering and provisioning functions at all, let alone tracking them with respect to each ILEC's internal and competitor access information, broken down by the categories and subcategories reflected in Appendix A. The Commission should give high priority to finding a minimum set of categories, perhaps resale, UNE, and UNE combinations, since the utility of further